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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

SONDRA SWEENEY, an individual;  
HUE BANH, an individual; JESSICA  
DERIE, an individual; ADAM  
SAUER, an individual; and SHARON  
MANIER, an individual, on behalf of  
themselves and all others similarly  
situated,

Plaintiffs,

v.

PARAMOUNT GLOBAL, a Delaware  
corporation; and DOES 1 through 100,  
inclusive,

Defendants.

Case No. 2:24-cv-00708-JAK-RAO

**PLAINTIFFS' SUPPLEMENTAL  
BRIEF RE ARTICLE III STANDING**

Complaint Filed: December 19, 2023

Courtroom: 10C

Pursuant to the Court’s Order (Dkt. No. 48), Plaintiffs submit this supplemental brief in Opposition to Defendant’s pending Motion to Dismiss (Dkt. No. 18) on the grounds that this Court lacks subject matter jurisdiction.

**I. INTRODUCTION AND PROCEDURAL BACKGROUND**

The issue before this Court—whether it has subject matter jurisdiction to adjudicate the case—was first presented in the context of Defendant’s Motion to Dismiss (see, e.g., Dkt. No. 20 (Plaintiffs’ Opposition to Motion to Dismiss; Dkt. No. 29 (Court Order Deferring Ruling on Motion to Dismiss). Questioning the Court’s own subject matter jurisdiction at the July 1, 2024 hearing (and expressing skepticism that it had jurisdiction), the Court ordered limited jurisdictional discovery, in the form to be determined by the Magistrate Judge. On October 4, 2024, Magistrate Judge Oliver permitted Paramount to serve five interrogatories on each Plaintiff and to then choose one plaintiff for a limited deposition (Dkt. No. 42). Plaintiffs provided interrogatory responses on November 12, 2024, and Plaintiff Sharon Manier was deposed on December 4, 2024.

Plaintiffs will discuss below the jurisdictional discovery and the Court’s lack of subject matter jurisdiction—the only issues that properly should be presented to this Court for consideration. However, Plaintiffs anticipate that Paramount—lacking any evidence to meet its burden to establish subject matter jurisdiction—will use its own supplemental brief to smear Plaintiff Sharon Manier, based upon her deposition testimony in this case. Regardless of such efforts, Ms. Manier’s testimony, as well as all of the other evidence that has been exchanged during the process of jurisdictional discovery, fully and emphatically supports Plaintiffs’ position that this case must be remanded for lack of Article III standing. By remanding the case on such grounds, this Court would proceed in accordance with the rulings of several other judges within this Court and other federal courts in nearly identical cases, who have each concluded that remand is required based on the allegations in the pleadings.

As noted in Plaintiffs’ Opposition to Paramount’s Motion to Dismiss, the first Court to remand a nearly identical case alleging violations of Civil Code section 1670.8 was the

1 Northern District of California in *Pulbrook, et al. v. Nationwide Mutual Insurance*  
2 *Company*, Case No. 3:24-cv-00469-MMC (N.D. Ca.) ECF No. 36). Since the *Pulbrook*  
3 decision, at least **6 additional courts** have issued similar remand motions. Those cases  
4 include: *O'Donnell et al. v. Crocs Retail, LLC et al.*, Central District of California Case  
5 No. 2:24-cv—2726-SVW-PD (Dkt. No. 28); *Maldonado et al. v. BPS Direct LLC et al.*,  
6 Central District of California Case No. 2:24-cv-00098-MRA-MAR (Dkt. No. 30);  
7 *Anderson et al. v. United Parcel Service of America, Inc. et al*, Central District of  
8 California Case No. 2:24-cv-00096-DSF-SSC (Dkt. No. 35); *Shofet et al. v. Zillow Inc. et*  
9 *al*, Central District of California Case No. 2:24-cv-00092-SVW-BFMx (Dkt. No. 48);  
10 *Shahbaz v. Arista Networks, Inc.*, Eastern District of California Case No. 2:24-cv-00431-  
11 DAD-SCR (Dkt. No. 35); and *Masry et al. v. Lowe's Companies, Inc. et al*, Northern  
12 District of California Case No. 3:24-cv-00750-CRB (Dkt. No. 44).

13 In each instance, upon a review the allegations in the pleadings nearly identical to  
14 those allegations here, the Courts concluded that “there is nothing in the record...to  
15 support a finding that plaintiffs have suffered, or are in danger of suffering, a concrete  
16 injury sufficient to confer Article III standing.” *Pulbrook, et al. v. Nationwide Mutual*  
17 *Insurance Company*, Case No. 3:24-cv-00469-MMC (N.D. Ca.) ECF No. 36 (at page 4).

18 Here, Plaintiffs originally filed their complaint commencing this action in State  
19 Court in the Superior Court for the County of Los Angeles. The Complaint alleges a  
20 single cause of action under California Civil Code section 1670.8. The Complaint alleges  
21 that Defendant Paramount has violated that statute by requiring its customers, through  
22 Paramount's Terms, to waive the consumers' speech rights, specifically their right to  
23 make any statement about Paramount or its products, services, or employees, as protected  
24 by Civil Code section 1670.8. In doing so, Plaintiffs pled all necessary allegations to  
25 pursue their claims against Paramount in state court, and there is no question that the state  
26 court can adjudicate Plaintiffs' claims by assessing civil penalties as set forth in the  
27 statute, voiding the unlawful provisions of the Terms, and issuing injunctive or other  
28 relief. This is the precise relief Plaintiffs seek in this action.

1 Defendant removed this action to this Court on January 25, 2024. Defendant's  
2 Notice of Removal is based solely upon the Class Action Fairness Act. (See Notice of  
3 Removal, Dkt. No. 1.) The Notice of Removal contains no allegations regarding  
4 Plaintiffs' standing or any allegation of concrete harm suffered by Plaintiffs.

5 As the removing party seeking to invoke the jurisdiction of the federal court, it is  
6 Defendant who bears the burden to demonstrate jurisdiction. *See, e.g., Emrich v. Touche*  
7 *Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988); *Gaus v. Miles Inc.*, 980 F.2d 564, 566  
8 (9th Cir. 1992). Here, Defendant Paramount has not done so. Accordingly, the case must  
9 be remanded to state court.

## 10 **II. ARGUMENT**

11 As this Court has already recognized when it ordered limited jurisdictional  
12 discovery to be completed, before the parties can proceed in the action before this Court,  
13 the Court first determine whether it has subject matter jurisdiction over the dispute. The  
14 Court has an independent obligation, regardless of the parties' positions, to examine  
15 whether subject matter jurisdiction exists in cases where the Defendant has removed the  
16 action to federal court. *United States v. Hays*, 515 U.S. 737, 742 (1995) ("The federal  
17 courts are under an independent obligation to examine their own jurisdiction, and standing  
18 is perhaps the most important of the jurisdictional doctrines."); *Valdez v. Allstate Ins. Co.*,  
19 372 F.3d 1115, 1116 (9th Cir. 2004). The issue of federal subject matter jurisdiction can  
20 be raised at any time.

21 In order to meet the constitutional minimum of standing in federal court, three  
22 elements must be met: (1) an injury in fact; (2) causation; and (3) a likelihood that the  
23 favorable decision will redress the plaintiff's alleged injury. *See Lopez v. Candaele*, 630  
24 F.3d 775, 785 (9th Cir. 2010) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560  
25 (1992)). To meet the element of an "injury in fact" a party must plead an "invasion of a  
26 legally protected interest which is (a) concrete and particularized, and (b) actual or  
27 imminent, not conjectural or hypothetical." *Lopez, supra*, 630 F.3d at 785 (internal  
28 quotations and citation omitted).

1 Plaintiffs’ complaint alleges, and Plaintiffs continue to believe, that contractual  
2 provisions that stifle speech are harmful to Plaintiffs and all Californians. However, while  
3 Plaintiffs’ claim meets all state court pleading requirements to pursue their claims in state  
4 court for the civil penalties and other remedies provided for in Civil Code section 1670.8,  
5 Plaintiffs case is not dependent upon—and thus Plaintiffs have admittedly not alleged—that  
6 any individual plaintiff suffered any direct, concrete harm as a result of Defendant’s clear  
7 and obvious violations of California Civil Code section 1670.8. Nor has Defendant pointed  
8 to any allegation or evidence (because none exists) to support its position that Plaintiffs’  
9 claims assert a concrete harm sufficient to confer Article III standing.

10 In a case such as this one, where a consumer protection statute seeks to protect  
11 consumers’ speech rights, other cases regarding subject matter jurisdiction in the context of  
12 the enforcement of speech rights are instructive. As the Ninth Circuit has explained in  
13 *Lopez, supra*, a Plaintiff seeking to enforce speech rights does not have Article III standing  
14 unless under imminent threat of enforcement. Defendant cannot meet its burden to show  
15 any such imminent threat is at issue in this case.

16 Allegations of a defendant’s violation of a statute, alone, does not “automatically  
17 satisf[y] the injury-in-fact requirement.” *See TransUnion LLC v. Ramirez*, 594 U.S. 413,  
18 426 (2021). In order to sue a defendant over a statutory violation in federal court, a  
19 Defendant must carry its burden of establishing jurisdiction by proving that plaintiff must  
20 “have been *concretely harmed* by a defendant’s statutory violation.” *See Id.* at 427  
21 (emphasis in original).

22 Here, Plaintiffs have alleged that Defendant violated California Civil Code section  
23 1670.8. Section 1670.8(a)(1) specifically makes unlawful “[a] contract or proposed contract  
24 for the sale or lease of consumer goods or services” that includes “a provision waiving the  
25 consumer’s right to make any statement regarding the seller or lessor or its employees or  
26 agents, or concerning the goods or services.” Plaintiffs allege that Defendant’s Terms  
27 governing visitors’ use of its website contain such a provision, and that Plaintiffs became  
28 subject to the Terms when they visited the website. Imminent enforcement or threat of

1 enforcement is not a necessary element of a Section 1670.8 violation. Accordingly, under  
2 the standard set forth in *Lopez*, such allegations do not rise to the level to confer Article III  
3 standing, and thus Plaintiffs’ claims—pled to meet state court pleading standards—must be  
4 adjudicated in state court. *See also TransUnion LLC*, 594 U.S. at 426 (allegations of a  
5 defendant’s violation of a statute, alone, do not “automatically satisf[y] the injury-in-fact  
6 requirement.”)

7 As noted above, this is the precise conclusion reached by three other federal courts  
8 in the last several months in nearly identical cases involving Section 1670.8. In *Pullbrook*  
9 *v. Nationwide*, Judge Chesney of the Northern District of California stated in her *sua sponte*  
10 order: “there is nothing in the record before the Court to support a finding that plaintiffs  
11 have suffered, or are in danger of suffering, a concrete injury sufficient to confer Article III  
12 standing.” *Pulbrook, et al. v. Nationwide Mutual Insurance Company*, Case No. 3:24-cv-  
13 00469-MMC (N.D. Ca.) ECF No. 36 at p.4. Similarly, in *Maldonado*, Judge Ramirez  
14 Almadani of the Central District of California reached the identical conclusion. *Maldonado*  
15 *et al. v. BPS Direct LLC et al.*, Central District of California Case No. 2:24-cv-00098-MRA-  
16 MAR (Dkt. No. 30). In that case, *Maldonado v. BPS Direct LLC*, relying on *Lopez v.*  
17 *Candaele*, *supra*, Judge Ramirez Almadani determined that where cases implicate an  
18 infringement of speech rights, allegations of subjective “chill” are not an adequate substitute  
19 for a claim of specific present objective harm or a threat of specific future harm.” *Id.* at p. 6  
20 (citing *Laird v. Tatum*, 408 U.S. 1, 13-14 (1972)). Accordingly, the *Maldonado* Court  
21 determined it could not rule on the merits of defendants’ Motion to Dismiss, and denied the  
22 motion as moot, pending remand of the action to state court. *Id.* Other courts have reached  
23 the same conclusion, **now seven times over**. See, e.g., *O’Donnell et al. v. Crocs Retail,*  
24 *LLC et al.*, Central District of California Case No. 2:24-cv—2726-SVW-PD (Dkt. No. 28);  
25 *Maldonado et al. v. BPS Direct LLC et al.*, Central District of California Case No. 2:24-cv-  
26 00098-MRA-MAR (Dkt. No. 30); *Anderson et al. v. United Parcel Service of America, Inc.*  
27 *et al*, Central District of California Case No. 2:24-cv-00096-DSF-SSC (Dkt. No. 35); *Shofet*  
28 *et al. v. Zillow Inc. et al*, Central District of California Case No. 2:24-cv-00092-SVW-



1 BFMx (Dkt. No. 48); *Shahbaz v. Arista Networks, Inc.*, Eastern District of California Case  
2 No. 2:24-cv-00431-DAD-SCR (Dkt. No. 35); and *Masry et al. v. Lowe's Companies, Inc.*  
3 *et al.*, Northern District of California Case No. 3:24-cv-00750-CRB (Dkt. No. 44).

4 There is no basis to distinguish any of these cases—pled in nearly identical terms—  
5 from the claims against Paramount. Since Paramount here, just like the defendants in those  
6 have not met their obligation to establish Article III standing, this Court does not have  
7 subject matter jurisdiction over this action. Plaintiffs' jurisdictional discovery responses,  
8 and the deposition testimony of Ms. Manier, do absolutely nothing to support Defendant's  
9 position regarding concrete harm to Plaintiffs such that this Court can exercise jurisdiction.  
10 In fact, each Plaintiff's interrogatory responses make clear that the basis for the action is  
11 Defendant's violation of the statute, not any direct harm suffered by any particular plaintiff  
12 sufficient to create Article III standing.

13 Where, as here, a removing Defendant has not met its burden to establish federal  
14 court jurisdiction, the proper remedy is to remand the action to state court. 28 U.S.C. §  
15 1447 (a case should be remanded if, "at any time before final judgment[,] it appears that  
16 the district court lacks subject matter jurisdiction."); *Polo v. Innoventions Int'l.*, 833 F.3d  
17 1193, 1196 (9th Cir. 2016) (where a "district court lacks subject matter jurisdiction," it  
18 "must remand the case to state court.")

19  
20 Dated: January 17, 2025

21  
22 /s/ Christopher R. Rodriguez  
23 CHRISTOPHER RODRIGUEZ (CA 212274)  
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24 Attorneys for Plaintiffs  
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**CERTIFICATE OF SERVICE**

I, Christopher R. Rodriguez, hereby certify that on January 17, 2025, the foregoing document was filed via the Court's CM/ECF system, which will automatically serve and send email notification of such filing to all registered attorneys of record.

/s/ Christopher R. Rodriguez  
Christopher R. Rodriguez